IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7940 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT WATER SUPPLY AND SEWERAGE BOARD - Petitioner(s)

Versus

ANIRUDHSINH LAKUBHAI ZALA - Respondent(s)

==========

Appearance :

MR MEHUL H RATHOD for Petitioner No(s).: 1.

MR DM THAKKAR for Respondent No(s).: 1.

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 16/08/2005

ORAL JUDGMENT

.

1. This petition is directed against the judgment and award dated 16th April, 1998 passed by the Labour Court, Rajkot in Reference [L.C.R.] No. 302 of 1993, whereby the Labour Court has directed the petitioner to

reinstate the respondent in service on his original post with continuity of service.

2. The short facts of the case are that the respondent was initially working as a Chowkidar on the scarcity project. Thereafter he was engaged as driver on daily wage basis. It is the case of the petitioner that his services were rendered as and when the work was available. It is further the case of the petitioner that on completion of the project work, the respondent was relieved from service w.e.f. 30th August, 1986.

2.1. Pursuant to that the respondent raised an industrial dispute which was ultimately referred to the Labour Court, for adjudication. The Labour Court after considering the materials produced before it passed the impugned award. Hence, this petition.

3. Mr. Rathod learned advocate for the petitioner has contended that the Labour Court has committed an error in granting reinstatement with continuity of service inasmuch as the respondent was appointed for scarcity work and on completion of the work, he was relieved from the services. In support of his contention

he has placed reliance on the decision of this Court in the case of **H.K. Makwana v. State of Gujarat reported in 1994 (2) G.L.R. p. 1002**, wherein the Court has held as under :-

> "(a) It is the primary and inalienable function of the State to provide livelihood to the persons who are affected by the natural calamities such as famine, earthquake, epidemic, flood, scarcity, etc and
>
> (b) admittedly, the relief work is not a "business" or "trade" and with regard to the "undertaking", the activity is not analogous to trade or business or that it is not a systematic activity but is carried out casually at different places depending on the calamities in a particular area."

4. Mr. Thakkar learned advocate for the respondent has supported the impugned award of the Labour Court, in view of the fact that the respondent was called for work vide letter dated 10th November, 1986 at annexure-B to the petition and subsequently, some other persons were appointed by the petitioner. Thus, there is a breach of Section 25G and 25H of the Industrial Disputes Act, 1947.

5. I have heard the learned counsel for the parties and have perused the materials produced on record. While

admitting the matter, this Court on 30th November, 1998 had confirmed the interim relief granted vide order dated 8th October, 1998. Having gone through the award, it appears that the Labour Court has committed an error in ordering reinstatement with continuity of service inasmuch as the respondent was engaged for a fixed period i.e., till the existence of scarcity project work. Moreover in view of the principle laid down by this Court in the case of H.K. Makwana v. State of Gujarat (supra), the award passed by the Labour Court is bad, illegal and perverse.

6. In above view of the matter, the petition is allowed. The impugned award dated 16th April, 1998 passed by the Labour Court, Rajkot in Reference [L.C.R.] No. 302 of 1993, is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/